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OFFICE OF THE INSPECTOR GENERAL

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**State watchdog reports that reforms in correctional
internal affairs investigations are proceeding well,
but remaining problems demonstrate need for continued vigilance**

The Bureau of Independent Review—the entity created inside the Office of the Inspector General to monitor internal affairs investigations in the state’s correctional system—reported today that court-ordered reforms of the Department of Corrections and Rehabilitation’s internal affairs and employee disciplinary processes have been largely successful, but that persistent problems demonstrate the need for continued vigilance.

The bureau was established in January 2005 as a central component in reforms mandated by U. S. District Court Judge Thelton E. Henderson in the wake of a class action lawsuit against the department. In that case, now known as *Madrid v. Tilton*, the court found that state correctional administrators and prison officials had regularly ignored the use of excessive force by correctional officers against inmates in violation of the Eighth Amendment and that internal affairs investigations appeared designed to avoid finding officer misconduct.

Created by the Governor as a means of remedying those problems, the Bureau of Independent Review is assigned to monitor the department’s internal affairs investigations to ensure they are completed in a thorough, objective and timely manner. The bureau also assesses whether the department’s legal representation during the disciplinary process is adequate and whether any

resulting discipline is just and proportionate. The bureau began full-time monitoring in July 2005.

“The court-ordered reforms of the internal affairs process continue to have a positive impact on the quality and fairness of internal affairs investigations and the department’s employee discipline process,” said Chief Assistant Inspector General David R. Shaw, who heads the Bureau of Independent Review.

Shaw praised department administrators for what he termed “excellent cooperation” with the bureau’s monitoring activities and reported that most of the department’s internal affairs investigators work conscientiously with the bureau’s attorneys to make sure investigations are conducted properly.

Nonetheless, he said, the involvement of the bureau has often been critical in ensuring that subjects and witnesses are adequately questioned, that investigations are opened when necessary and not closed prematurely, and that the department brings appropriate action against employees found to have engaged in misconduct.

Shaw pointed to two cases that illustrate some of the persistent problems. In one case—dubbed the “rat trap case”—a correctional captain at a prison reported that he was threatened by other employees for reporting that excessive force had been used against an inmate. After the employees involved in the alleged use of force were put on administrative time off pending an investigation, a department employee, serving as a local labor official, posted a metal rat trap and a message on a union bulletin board at the prison, implying in correctional jargon that the captain had been a “rat”—an informant—for reporting the alleged misconduct.

Even though the reported behavior appeared to violate the department’s no-tolerance policy against the “code of silence”—which in the past has worked to discourage correctional employees from reporting misconduct and was at the heart of reforms instituted by the federal court—Shaw said the department’s investigator sought twice to prematurely close the case, arguing that it did not warrant an investigation. The bureau successfully intervened, however, and a thorough internal affairs investigation was finally conducted and submitted to the hiring authority for action. A 60-day suspension was ultimately imposed against the employee who posted the rat trap message. That employee has appealed the decision.

In a second case, an elderly inmate died of starvation in a state prison after refusing meals over a period of many months, even though department policy requires the staff to take specific measures in response to such behavior. Although the medical and custody staff regularly documented his deteriorating physical condition, prison physicians declined to evaluate him unless he came to the prison medical clinic. The inmate, a native of India who spoke only Punjabi, repeatedly failed to keep his appointments, perhaps because he did not understand he was to go to the clinic. Despite entreaties by the mental health staff, the physicians, including the supervising physician, refused to go to the inmate's living unit to assess his condition.

By the time the bureau began operations, a criminal investigation into the matter had already been completed and the district attorney had found insufficient evidence to support a charge of criminal negligence against medical staff. However, the department failed to pursue a timely administrative investigation, subsequently allowing the one-year statutory time limit for imposing discipline against "sworn staff" — peace officers — to expire, and nearly expire for the involved medical staff.

Disciplinary action was finally taken against one of the nurses involved and is pending against another involved nurse. One of the physicians has since resigned and the department has recently advised the bureau that it is no longer considering disciplinary action against the supervising physician. The three year statutory deadline for disciplinary action against medical staff, including the supervising physician, expires on February 28, 2007.

In addition to those cases, Shaw reported other difficulties in the department's employee disciplinary process. One problem, he said, is that some of the department's attorneys appear reluctant to litigate cases before the State Personnel Board and instead encourage hiring authorities to settle cases. Shaw said the reason may be that some of the attorneys lack familiarity with the cases because they fail to become involved during the investigation, as required under mandated reforms. Usually such cases are settled at a discipline level significantly less than is called for under department guidelines, Shaw said. He also noted that some of the department's staff attorneys are lacking in training and experience, especially when compared to the legal representation provided to employees by labor organizations. The bureau has recommended that the department hire more experienced litigators and improve training of new staff attorneys.

The bureau also has been actively involved in addressing policy issues affecting the department, such as statutory impediments to obtaining in-prison medical records in connection with criminal investigations and inefficiencies in the disciplinary hearing process, Shaw said.

The document released today, the bureau's third semi-annual report, covers the six-month period January through June 2006. During that time, the bureau monitored 221 internal affairs investigations—46 percent of the internal affairs investigations opened by the Department of Corrections and Rehabilitation. The majority of the investigations—63 percent—involved allegations of administrative misconduct, such as misuse of state resources or dishonesty during a criminal investigation, while 19 percent involved allegations of criminal misconduct. The remainder generally involved less serious allegations. Most of the cases involved sworn peace officers, such as correctional officers and supervisors, who make up 61 percent of correctional employees.

During the six-month period, the bureau also monitored 61 “critical incidents” at state prisons and juvenile correctional facilities —events involving significant use of force or resulting in the death or serious injury of an inmate or correctional employee. The bureau was precluded from monitoring 18 other incidents because institutions failed to promptly notify the bureau when they occurred.

The full text of the Bureau of Independent Review's semi-annual report covering the period January through June 2006 may be viewed and downloaded from the Office of the Inspector General's website at <http://www.oig.ca.gov/>.

The Office of the Inspector General is an independent state agency responsible for oversight of the California Department of Corrections and Rehabilitation. The Bureau of Independent Review was established under California Penal Code section 6133.

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